

David A. Tilem (SB # 103825)
Kevin S. Lacey (SB # 140918)
LAW OFFICES OF DAVID A. TILEM
206 N. Jackson Street, Suite 201
Glendale, California 91206
Tel: (818) 507-6000 Fax: (818) 507-6800
Email: kevinlacey@tilemlaw.com

Attorneys for Debtor

FILED & ENTERED

JUN 12 2013

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY fortier DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:) Case No. 2:11-bk-30426-BR
)
) Chapter 11
SMB GROUP, INC.,)
)
) Debtor.)
)
SMB GROUP, INC.) Adv Case No. 2:13-ap-01020-BR
)
) Plaintiff,) **ORDER ON COUNTER-DEFENDANT SMB**
v.) **GROUP, INC.'S MOTION TO DISMISS**
)
RICHARD K. DIAMOND,)
) Date: May 7, 2013
) Time: 10:00 a.m.
) CtRm: 1668
) 255 E. Temple Street
RICHARD K. DIAMOND,) Los Angeles 90012
)
) Counterclaimant,)
)
v.)
)
SMB GROUP, INC., as debtor)
and debtor-in-possession,)
)
) Counter-Defendant)

1
2 **RICHARD K. DIAMOND**)
3 Third-Party Plaintiff,)
4 v.)
5 **IN CHUL SHIN, aka JEFF SHIN,**)
6 **an individual; UNION TRIM,**)
7 **INC.; USB GROUP, INC.; ALPHA**)
8 **SEWING MACHINE,**)
9 Defendant.)

9 **COMES NOW:**

10 The above-entitled adversary action and related actions came
11 on for hearing on Counter-Defendant SMB Group, Inc's motion to
12 dismiss the Counterclaim of Richard K. Diamond, pursuant to
13 Federal Rule 12(b)(6), made applicable to bankruptcy cases by
14 Rule 7012 of Federal Rules of Bankruptcy Procedure.

15 Kevin Lacey of the Law Offices of David A. Tilem appeared on
16 behalf of Plaintiff, Counter Defendant, and moving party SMB
17 Group, Inc. Steven J. Schwartz of Danning, Gill, Diamond &
18 Kollitz, LLP appeared on behalf of Defendant, Counterclaimant,
19 and Third Party Plaintiff Richard K. Diamond. David Lally
20 appeared on behalf of Third Party Defendant Jeff Shin.

21 The Court, after considering all papers filed in support of,
22 and in opposition to, the motion to dismiss, and after
23 entertaining the oral argument of counsel, made the following

24 **ORDER:**

- 25 1. The motion to dismiss the first claim for relief for
26 Fraud is **DENIED**;

1 2. The motion to dismiss the second claim for relief for
2 Negligence is **GRANTED WITHOUT LEAVE TO AMEND;**

3 3. The motion to dismiss the third claim for relief for
4 Abuse of Process is **GRANTED WITHOUT LEAVE TO AMEND;**

5 4. Counsel for SMB Group, Inc., is directed to prepare the
6 proposed order.

7
8 #####
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24 Date: June 12, 2013



25 Barry Russell
26 United States Bankruptcy Judge
27
28

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): **ORDER ON COUNTER-DEFENDANT SMB GROUP, INC'S MOTION TO DISMISS** was entered on the date indicated as AEntered@ on the first page of this judgment or order and will be served in the manner stated below:

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) B Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*)**5/21/13**, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

- Howard Kollitz HKollitz@DGDK.Com, DanningGill@gmail.com
- Kevin S Lacey klacey@lddl.com, kevinlacey@tilemlaw.com; malissamurguia@tilemlaw.com; dianachau@tilemlaw.com; joanfidelson@tilemlaw.com
- David B Lally davidlallylaw@gmail.com
- Steven J Schwartz sschwartz@dgdk.com, DanningGill@gmail.com
- David A Tileml davidtileml@tilemlaw.com, malissamurguia@tilemlaw.com; dianachau@tilemlaw.com; joanfidelson@tilemlaw.com
- United States Trustee (LA) ustregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY THE COURT VIA UNITED STATES MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

☐ Service information continued on attached page

3. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an AEntered@ stamp, the party lodging the judgment or order will serve a complete copy bearing an AEntered@ stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

attached page

☐ Service information continued on